

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CEDRIC MILES,

Petitioner,

v.

GARY H. FILION,

Respondent.

ORDER
02-CV-501S

1. On September 26, 2006, this Court accepted Judge Schroeder's Report and Recommendation and denied and dismissed Petitioner's Petition for Writ of Habeas Corpus.

2. On October 25, 2006, Petitioner filed a Notice of Appeal and a Motion to Proceed on Appeal *In Forma Pauperis*.

IT HEREBY IS ORDERED, that because the issues raised in the Petition are not the type of issues that a court could resolve in a different manner, and because these issues are not debatable among jurists of reason, this Court concludes that Petitioner has failed to make a substantial showing of the denial of a constitutional right, 28 U.S.C. § 2253(c)(2), and accordingly, a Certificate of Appealability is DENIED.

FURTHER, that a Certificate of Appealability shall not issue.

FURTHER, that this Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from the Decision (Docket No. 15) or Judgment (Docket No. 16) would not be taken in good faith and therefore, Petitioner's Motion to Proceed on Appeal *In Forma Pauperis* (Docket No. 19) is DENIED.

SO ORDERED.

Dated: December 5, 2006
Buffalo, New York

/s/William M. Skretny
WILLIAM M. SKRETNY
United States District Judge